DECISION

Dispute Codes   OPR, MNR, MNSD, FF

Introduction

This matter was conducted by way of Direct Request Proceeding, pursuant to section 55(4) of the Act, and dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession and a Monetary Order for unpaid rent.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on May 18, 2010 the Landlord served the Tenant with the Notice of Direct Request Proceeding via registered mail. Section 90 of the Residential Tenancy Act deems a document delivered in that manner to have been received (or served) on the fifth day after it was sent.

Based on the evidence and written submissions of the Landlord, I find that the Tenant was served as required by s. 89 of the Act with the Dispute Resolution Direct Request Proceeding documents.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to an Order of Possession for unpaid rent; to a Monetary Order for unpaid rent; to keep all or part of the security deposit; and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 46, 55, 67, and 72 of the *Residential Tenancy Act (Act).*

Background and Evidence

The Landlord submitted the following documentary evidence:

- A copy of the Proof of Service of the Notice of Direct Proceeding for the Tenant;

- A copy of a residential tenancy agreement which was signed by the parties on June 1, 2009 for a month-to-month tenancy beginning June 1, 2009 for the monthly rent of $925.00 due on 1st of the month and a security deposit of $462.50 was paid on June 1, 2009; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on April 6, 2010 with an effective vacancy date of April 16, 2010 due to $925.00 in unpaid rent.

The evidence filed by the Landlord indicates that the Tenant failed to pay the rent owed for the month of April 2010 and that the Tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent when it was posted on the door of the Tenant's rental unit on April 6, 2010.   The Notice states that the Tenant had five days to pay the rent or apply

for Dispute Resolution or the tenancy would end. The Tenant did not apply to dispute the Notice to End Tenancy within five days.

Analysis

I have reviewed all of the documentary evidence and accept that the Tenant been served with the Notice to End Tenancy as declared by the Landlord. The Notice is deemed to have been received by the Tenant on April 9, 2010, and the effective date of the Notice is amended to April 19, 2010 pursuant to section 53 of the *Act*. I accept the evidence before me that the Tenant has failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*. Based on the foregoing, I find that the Tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

Conclusion

I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession effective **two days after service on the Tenant**. This Order must be served on the Tenant and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I also find that the Landlord is entitled to monetary compensation pursuant section 67 of the Act in the amount of **$975.00** comprised of $925.00 rent owed and the $50.00 fee paid by the Landlord for this application. I order that the Landlord may retain the deposit held of $462.50 in partial satisfaction of the claim and grant an Order for the balance due of **$512.50**. This Order must be served on the Tenant and may be filed in the Provincial (Small Claims) Court of British Columbia and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 26, 2010.

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Dispute Resolution Officer